

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	PRELIMINARY ORDER OF
	:	FORFEITURE/FINAL ORDER OF
-v.-	:	FORFEITURE AS TO
	:	<u>JAMES G. MARQUEZ</u>
JAMES G. MARQUEZ,	:	
	:	06 Cr. 1138 (CM)
Defendant.	:	

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WHEREAS, on December 14, 2006, the defendant JAMES G. MARQUEZ (the "defendant") was charged in Information 06 Cr. 1138 (CM) (the "Information") with conspiracy to commit investment adviser fraud and mail fraud, in violation of 18 U.S.C. § 371;

WHEREAS, the Information included a forfeiture allegation charging that the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense set forth in Count One, to wit, all right, title and interest of the defendant in the following, and all property traceable thereto:

- a. 20,000 shares of common stock in KFx Inc., stock certificate No. 7476;
- b. 20,000 shares of common stock in KFx Inc., stock certificate No. 7477;
- c. 20,000 shares of common stock in KFx Inc., stock certificate No. 7478;
- d. 20,000 shares of common stock in KFx Inc., stock certificate No. 7479;

- e. 20,000 shares of common stock in KFx Inc., stock certificate No. 7480;
- f. 106,454 shares of common stock in HydroGen, stock certificate No. 640;
- g. 70,026 shares of common stock in HydroGen, stock certificate No. 554;
- h. 550,000 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-CW02, expiring on 07/15/08;
- i. 341,211 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-PA3, expiring on 07/15/08;
- j. 2004.3743 shares of series B-2 convertible participating preferred stock of Integrated Fuel Cell Technology; and,
- k. all proceeds of the sale of the property at 1621 Gaspar Drive South, Boca Grande Isles, PB 29, PG6, Lot #4, Boca Grande, Florida 33921.

WHEREAS, on December 14, 2006, the defendant pleaded guilty pursuant to a plea agreement in which the defendant admitted to the forfeiture allegations in the Information and agreed to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all right, title and interest of the defendant in the following property, on the ground that it constitutes proceeds obtained as a result of the offense charged in Count One, and property traceable to such property:

- a. 20,000 shares of common stock in KFx Inc., stock certificate No. 7476;
- b. 20,000 shares of common stock in KFx Inc., stock certificate No. 7477;

- c. 20,000 shares of common stock in KFx Inc., stock certificate No. 7478;
- d. 20,000 shares of common stock in KFx Inc., stock certificate No. 7479;
- e. 20,000 shares of common stock in KFx Inc., stock certificate No. 7480;
- f. 106,454 shares of common stock in HydroGen, stock certificate No. 640;
- g. 70,026 shares of common stock in HydroGen, stock certificate No. 554;
- h. 550,000 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-CW02, expiring on 07/15/08;
- i. 341,211 warrants to purchase common stock of ThermoEnergy Corp, identification no. W05-PA3, expiring on 07/15/08;
- j. 2004.3743 shares of series B-2 convertible participating preferred stock of Integrated Fuel Cell Technology; and,
- k. all proceeds of the sale of the property at 1621 Gaspar Drive South, Boca Grande Isles, PB 29, PG6, Lot #4, Boca Grande, Florida 33921.

(collectively, the "Specific Property");

WHEREAS, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461 and Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure, and based on the defendant's guilty plea and plea agreement, the United States is now entitled, pending any assertion of third-party claims, to reduce the Specific Property to its possession and to notify any and all potential purchasers and transferees thereof of its interest therein;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. All of the defendant's right, title and interest in the Specific Property is hereby forfeited to the United States for disposition in accordance with law, subject to the provisions of 21 U.S.C. § 853(n)(1).

2. The United States is hereby authorized to take possession of the Specific Property and to hold such Specific Property in its secure custody and control.

3. Pursuant to 21 U.S.C. § 853(n)(1), the United States Department of Justice forthwith shall publish at least once for three successive weeks in a newspaper of general circulation, notice of this Order, notice of the United States' intent to dispose of the Specific Property in such manner as the Attorney General may direct, and notice that any person, other than the defendant, having or claiming a legal interest in the Specific Property must file a petition with the Court within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier.

4. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Specific Property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title or interest in

the Specific Property and any additional facts supporting the petitioner's claim and the relief sought.

5. The United States may also, to the extent practicable, provide direct written notice to any person known to have an alleged interest in the Specific Property that is the subject of this Order of Forfeiture, as a substitute for published notice as to those persons so notified.

6. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Preliminary Order of Forfeiture the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of the property, including depositions, interrogatories, requests for production of documents and to issue subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

7. Upon adjudication of all third-party interests, this Court will enter a final order of forfeiture pursuant to 21 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(c), in which all interests will be addressed.

8. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, this Order of Forfeiture shall be final against the defendant JAMES G. MARQUEZ, shall be made part of the sentence of the defendant JAMES G. MARQUEZ, and shall be included in the judgment of conviction therewith.

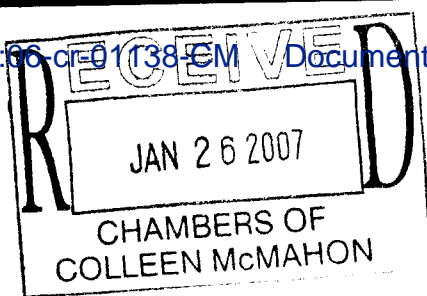
9. The Clerk of the Court shall forward four certified copies of this order to Assistant U.S. Attorney Margery B. Feinzig, 300 Quarropas Street, White Plains, New York, 10601.

Dated: White Plains, New York
January 26, 2007

SO ORDERED:

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

HONORABLE COLLEEN McMAHON
UNITED STATES DISTRICT JUDGE



U.S. Department of Justice

United States Attorney
Southern District of New York

United States District Courthouse
300 Quarropas Street
White Plains, New York 10601

January 26, 2007

BY HAND

Honorable Colleen McMahon
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: U.S. v. James G. Marquez
06 Cr. 1138 (CM)

Dear Judge McMahon:

In connection with the above-referenced matter, we respectfully request that the Court enter the enclosed Preliminary Order of Forfeiture. The Preliminary Order relates to the disposition of the assets named in the above-referenced Information. Marquez, in his plea agreement, admitted to the forfeiture allegations contained in the Information.

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney
Southern District of New York

By:

Margery B. Feinzig
Assistant United States Attorney
(914) 993-1912

cc: Stanley A. Twardy, Jr., Esq. (By Fax)